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SD2008700244

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ESAU ROGERS, Plaintiff, **v.** **S. RIVAS, et al.,** Defendants.	07-CV-02010 W-JMA **DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S COMPLAINT, AND TO STRIKE** [Fed. R. Civ. P 12(b), 12(b)(1), 12(b)(6), 12(f)] Hearing: June 26, 2008 Time: 9:00 a.m. Courtroom: D Judge: The Honorable Jan M. Adler **No Oral Arugment Required Per Court**

TO ESAU ROGERS, Plaintiff in pro per:

PLEASE TAKE NOTICE that on June 26, 2008 at 9:00 a.m., or as soon thereafter as the matter can be heard in the Courtroom of the United States District Court located at 940 Front Street, San Diego, California, the Defendants will and do hereby move the court for an order dismissing the Complaint for your failure to exhaust administrative remedies (Fed. R. Civ. P.

12(b)), and your failure to state a cognizable claim against them (Fed. R. Civ. P. 12(b)(6)). The Defendants will and do hereby also move to strike your request for punitive damages (Fed. R. Civ. P. 12(f)). This motion is based on this notice of motion and motion, the supporting memorandum of points and authorities, and the declarations of N. Grannis and D. DeGues filed and served herewith.

Dated: May 16, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

DAVID S. CHANEY
Chief Assistant Attorney General

FRANCES T. GRUNDER
Senior Assistant Attorney General

MICHELLE DES JARDINS
Supervising Deputy Attorney General

/s/ Stephen A. Aronis

STEPHEN A. ARONIS
Deputy Attorney General
Attorneys for Defendants

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Rogers, Esau v. Rivas, et al.**

No.: **07-CV-02010 W-JMA**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266.

On May 16, 2008, I served the attached **DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S COMPLAINT, AND TO STRIKE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Diego, California, addressed as follows:

Esau Rogers
P-54800
Centinela State Prison
P.O. Box 731
Imperial, CA 92251-0731

In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 16, 2008, at San Diego, California.

J. Grand

Declarant | Signature

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